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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re VICTOR R., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR R.,

Defendant and Appellant.

F077307

(Super. Ct. No. JJD071252)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Juliet
L. Gallo, Judge.

Joseph M. Ahart, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Jeffrey
A. White, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Peña, J. and DeSantos, J.

INTRODUCTION

After a Welfare and Institutions Code section 602 petition (petition) was filed, it was found true that appellant Victor R. had committed multiple criminal acts, including second degree robbery, as defined by Penal Code¹ section 211. The minor contends the evidence is insufficient to sustain the true finding on the robbery count. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

The petition filed on February 2, 2018, alleged that Victor had committed second degree robbery, as defined in section 211 (count 1); assault with a stun gun or taser, within the meaning of section 244.5, subdivision (b) (count 2); possession of a concealed firearm, as defined in section 25400, subdivision (a)(2) (count 3); possession of a weapon by a minor, within the meaning of section 29610 (count 4); carrying a loaded firearm in a city, in violation of section 25850, subdivision (a) (count 5); minor in possession of live ammunition, as defined in section 29650 (count 6); and giving false information to a police officer, in violation of section 148.9, subdivision (a) (count 7).

Following a contested jurisdictional hearing, the juvenile court found count 1 and counts 3 through 7 had been proven beyond a reasonable doubt. The juvenile court found that count 2 had not been proven beyond a reasonable doubt and it was dismissed.

At the jurisdictional hearing, Officer Josue Silva of the Dinuba Police Department testified that he responded to a call of a disturbance at a market in Dinuba. While he was en route, dispatch advised Silva that “one subject appeared to have [] taken something from another.” Silva interviewed the victim, who had been injured in the attack.

Detective Irwin Davalos was investigating the incident at the market and obtained the surveillance video from the restaurant located next to the market. Jorge Arias owns the restaurant next to the market. His video surveillance system had five cameras; one

¹ References to code sections are to the Penal Code unless otherwise specified.

camera was pointed toward the market. Arias provided the video of the altercation to officers. The video was admitted into evidence.

The video showed the altercation outside the market between the victim, Victor, and two other juveniles, C.A. and J.O. Officer Jessica Martin, whose assignment included Dinuba High School, identified Victor, C.A., and J.O. as the three juveniles in the video.

Officer Juan Moreno testified that he was dispatched on January 31, 2018, to a recreation center in response to a call from Victor's mother that Victor was a runaway, refusing to return home, and was in the company of two other juveniles. When Moreno arrived, he saw Victor and several other juveniles in the nearby park drinking malt liquor.

Moreno approached the juveniles and Victor initially identified himself as C.A. In preparing to detain Victor, Moreno asked if he had any weapons on his person and Victor acknowledged having a weapon in his waistband. Moreno found a .22-caliber handgun in Victor's waistband. It was later determined there were nine rounds of ammunition in the firearm.

After securing the weapon, Moreno walked Victor to the patrol car, where Victor spontaneously provided his real name. Victor also told Moreno the firearm was not his; he claimed to be holding it for someone. Victor asked Moreno to retrieve his cell phone; Moreno did, and found a "viper tech stun gun" next to Victor's phone.

Davalos interviewed Victor, who eventually admitted he was involved in the attack on the victim. Victor stated he and his friends had been trying to obtain some money. Davalos testified Victor admitted he "went into the victim's pockets" and that during the attack, the victim's cell phone was taken. Davalos stated Victor told him, "when they were running, one of the minors threw the phone. Someone threw the phone." Davalos clarified on cross-examination that Victor did not state that he personally took the cell phone from the victim.

At the conclusion of the contested jurisdictional hearing, the juvenile court declared Victor a ward of the court and placed him on probation in an out-of-home placement. Victor was committed to the “Mid Term Program” for a period of 365 days and his maximum period of confinement was set at seven years two months.

Victor filed a timely notice of appeal on April 2, 2018.

DISCUSSION

Victor contends the evidence is insufficient to support the true finding on the robbery count because there is no evidence that any property was taken. Furthermore, Victor contends that any evidence of a taking is based solely on his statement, and his statement alone cannot prove an element of the crime.

Sufficiency of the Evidence

“To determine the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the prosecution to determine whether it contains [substantial] evidence that is reasonable, credible and of solid value, from which a rational trier of fact could find that the elements of the crime were established beyond a reasonable doubt.” (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955.) We “presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) “We need not be convinced of the defendant’s guilt beyond a reasonable doubt; we merely ask whether ‘ “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” ’ ” (*People v. Tripp, supra*, 151 Cal.App.4th at p. 955, italics omitted.) This standard of review also applies to circumstantial evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) If the circumstances, plus all the logical inferences the jury might have drawn from them, reasonably justify the trier of fact’s findings, our opinion that the circumstances might also reasonably be reconciled with a contrary

finding does not warrant a reversal of the judgment. (*People v. Panah* (2005) 35 Cal.4th 395, 487-488; *People v. Bradford* (1997) 15 Cal.4th 1229, 1329.)

Evidence of Taking

Section 211 defines robbery as the “felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” Victor challenges the true finding on the robbery count on the grounds there is no evidence that personal property was taken from the victim.

The video entered into evidence shows the attack on the victim, including the rifling of the victim’s pockets. The video depicts C.A. “taking the victim from behind in what looks like a chokehold,” J.O. rifling through the victim’s pockets, and Victor “going towards the victim” when C.A. is “taking him down.” The trial court found the video showed Victor was a participant in the attack on the victim and that Victor admitted a cell phone was taken.

This constitutes sufficient evidence of a taking. A cell phone was taken from the victim by force or fear.

Corpus Delicti Rule

Victor contends that if there is evidence of a taking, the only evidence is his statement and without independent evidence of a taking, the true finding on the robbery count must be reversed.

“In every criminal trial, the prosecution must prove the corpus delicti, or the body of the crime itself—i.e., the fact of injury, loss, or harm, and the existence of a criminal agency as its cause. In California, it has traditionally been held, the prosecution cannot satisfy [the] burden [of proving the corpus delicti] by relying *exclusively* upon the extrajudicial statements, confessions, or admissions of the defendant.” (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1168-1169 (*Alvarez*).)

In *People v. Ochoa* (1998) 19 Cal.4th 353 (*Ochoa*), our Supreme Court explained the law of corpus delicti in some detail. “The law of corpus delicti contains ‘two distinct, though related, concepts First, the *corpus delicti* is a necessary element of the prosecution’s case in a criminal trial Thus, a precondition to conviction is that the state prove that a “crime” has been committed—otherwise there could not possibly be guilt, either in the accused or in anyone else. [¶] The second concept is closely related to the first. The “corpus delicti rule” prohibits the prosecutor from establishing the *corpus delicti* ... through the use of the extrajudicial statements of the defendant. [Citations.] Thus the state must prove the *corpus delicti* independently of the accused’s out-of-court declarations....’ ” (*Id.* at p. 404.)

Ochoa clarified that “ ‘The purpose of the corpus delicti rule is to assure that “the accused is not admitting to a crime that never occurred.” ’ ” (*Ochoa, supra*, 19 Cal.4th at p. 405; see *Alvarez, supra*, 27 Cal.4th at p. 1169 [“[The corpus delicti] rule is intended to ensure that one will not be falsely convicted, by his or her untested words alone, of a crime that never happened.”].) Thus, when a defendant’s statements are offered to prove the commission of a crime, “ ‘ “slight corroborating facts” ’ [citation] must show independently ‘that a crime has been committed by someone.’ ” (*Ochoa, supra*, at p. 405.) “ ‘No universal and unvariable rule can be laid down in regard to the proof of the corpus delicti. Each case depends upon its own peculiar circumstances.’ ” (*Ibid.*) However, the “modicum of necessary independent evidence of the corpus delicti, and thus the [trier of fact’s] duty to find such independent proof, is not great. The independent evidence may be circumstantial, and need only be a ‘slight or prima facie showing’ permitting an inference of injury, loss, or harm from a criminal agency, after which the defendant’s statements may be considered to strengthen the case on all issues.” (*Alvarez, supra*, 27 Cal.4th at p. 1181.) The evidence adduced to establish the corpus

delicti of an offense will be deemed sufficient so long as “it permits an inference of criminal conduct, even if a noncriminal explanation is also plausible.” (*Id.* at p. 1171.)

The longstanding rule in California was that “ ‘once the *corpus delicti* has been proved by ... evidence [independent of the defendant’s out-of-court statements], the extrajudicial statements then become admissible to determine the defendant’s connection with the crime.’ ” (*Ochoa, supra*, 19 Cal.4th at pp. 404-405.) In *Alvarez*, the Supreme Court modified this rule, after the electorate passed Proposition 8 in June 1982, adding the “Right to Truth-in-Evidence” provision to the California Constitution. (Cal. Const., art. I, § 28(d); see *Alvarez, supra*, 27 Cal.4th at p. 1165 [Proposition 8, adding § 28, subd. (d) to art. I of the Cal. Const., abrogated “any corpus delicti basis for excluding the defendant’s extrajudicial statements from evidence.”].) *Alvarez* explained: “Because of the adoption of section 28(d) [of article I of the California Constitution] through Proposition 8, there no longer exists a trial objection to the *admission in evidence* of the defendant’s out-of-court statements on grounds that independent proof of the corpus delicti is lacking. If otherwise admissible, the defendant’s extrajudicial utterances may be introduced in his or her trial without regard to whether the prosecution has already provided, or promises to provide, independent prima facie proof that a criminal act was committed.” (*Id.* at p. 1180.)

However, *Alvarez* clarified that Proposition 8 did not eliminate the underlying corpus delicti rule itself. Thus, for the evidence supporting a conviction to be legally sufficient, the prosecution is still required to establish the corpus delicti of the relevant crime by proof that is distinct and separate from the defendant’s extrajudicial statements. (*Alvarez, supra*, 27 Cal.4th at p. 1165 [“[S]ection 28(d) *did not* abrogate the corpus delicti rule insofar as it provides that every *conviction* must be supported by some proof of the corpus delicti *aside from or in addition to* such statements, and that the jury must be so instructed.”].) Furthermore, “section 28[, subdivision] (d) did not affect the rule to

the extent it (1) requires an instruction to the jury that no person may be convicted absent evidence of the crime independent of his or her out-of-court statements or (2) allows the defendant, on appeal, directly to attack the sufficiency of the prosecution's independent showing." (*Alvarez, supra*, 27 Cal.4th at p. 1180.)

The independent evidence necessary to satisfy the corpus delicti rule may be circumstantial and need only be a slight or prima facie showing permitting an inference of injury, loss, or harm from criminal activity, "after which the defendant's statements may be considered to strengthen the case on all issues." (*Alvarez, supra*, 27 Cal.4th at p. 1181.) Here, the video showing Victor, C.A. and J.O. attacking the victim and rifling through the victim's pockets provides independent evidence that a crime occurred.

Having established that a crime occurred by independent evidence, Victor's statement that a cell phone was taken from the victim can be used "to strengthen the case on all issues." (*Alvarez, supra*, 27 Cal.4th at p. 1181.) "The independent proof [of a criminal act] may be circumstantial and need not be beyond a reasonable doubt" (*Id.* at p. 1171.) The video shows one of the juveniles rifling through the victim's pockets, creating an inference that the purpose of the attack was to take personal property from the victim. Victor's out-of-court statement strengthens the evidence that personal property was taken from the victim, specifically a cell phone.

There is no violation of the corpus delicti rule because the true finding is not based solely on Victor's out-of-court statement.

DISPOSITION

The judgment is affirmed.